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Poverty, Domestic Violence, and the COVID-19 Pandemic

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Poverty, Domestic Violence, and the COVID-19 Pandemic

Abstract

There is a distinct correlation between domestic violence and level of income; the lower the income, the higher the prevalence of domestic violence. When poverty and domestic violence intertwine, the consequences for a family in poverty can be devastating.

The COVID-19 pandemic of 2020 has added immense pressure to families in poverty already suffering economic hardship. The sudden loss of income due to the nationwide shelter-in-place mandate coupled with prolonged proximity to partners and children all day make for a ticking time bomb for many families in poverty.

Law enforcement, criminal courts, and family & dependency courts follow standard policies and procedures set out for domestic violence without taking into account differing socioeconomic statuses. Families in poverty do not withstand involvement in the criminal justice system in the same manner wealthier families do. The loss of needed resources for bail, court ordered fines and fees, and mandatory batterer intervention programs leave families in poverty with the choice of buying food to feed their families that week or abiding by court orders to remain out of jail.

This paper explores the link between domestic violence and poverty in an effort to seek an understanding of the decades long failure of the legislative and judicial systems in addressing the needs of families in poverty when faced with domestic violence. This paper will analyze the effects of the criminal, family, and dependency courts on families in poverty and examine socioeconomic bias at a systemic level. Commonsense approaches to aid judges, child welfare workers, law enforcement, and policy makers will be addressed in an attempt to protect families in poverty from the devastating consequences of domestic violence both inside and outside of the courthouse.

Written by Tammy Henson
April 2020

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I.

INTRODUCTION

Leonda Moore fled to her neighbor's house in Georgetown, Texas after being shot by her boyfriend Ruben Tobias on April 2, 2020.¹ Police found Moore's 15-year-old daughter lying in a pool of blood after being fatally shot by Tobias. Tobias was found in a pool of blood from a self-inflicted fatal gunshot wound.² One week later 24-year-old Police Officer Breann Leath was fatally shot by Elliahs Dorsey while responding to a domestic disturbance at Dorsey's home in Indianapolis, Indiana. Dorsey shot his girlfriend inside the home and then opened fire on officers outside the home, killing Leath.³

That same day, over 466,000 cases of COVID-19 were confirmed in the United States, and over 17,000 deaths.⁴ California Governor Gavin Newsom was the first to issue a shelter-in-place mandate on March 19, 2020.⁵ Instantly, millions of Californians were out of work with no income. 42 states followed suit and as of April 7, 2020, 306 million Americans, 94.5% of the population, were sheltering-at-home due to COVID-19, also known as the coronavirus.⁶

The economic consequences of the pandemic have affected a significant number of Americans, some families much more than others. For families in poverty, the loss of income combined with a lack of resources from the federal government leave families under intense pressure of not knowing where their next meal will come from or how to pay rent next month. Unfortunately, poverty and pressure go hand-in-hand. Economic hardship often increases a partner's violent behavior. Partners who otherwise have kept their violent behavior in check, crack under the pressure and violent behaviors emerge.

¹ Valshnavi Valdyanathan, "Texas Murder-Suicide: Man Fatally Shoots Girlfriend's 15-year-old Daughter Following Argument, Then Kills Self," *International Business Times*, ibtimes.com (2020).

² Ibid.

³ "IMPD Officer Breann Leath killed while responding to domestic disturbance on east side," *Fox 59 News*, fox59.com (2020).

⁴ "Coronavirus updates from April 9, 2020," *CBS News*, cbsnews.com (2020).

⁵ "Governor Gavin Newsom Issues Stay at Home Order," *Office of Governor Gavin Newsom*, gov.ca.gov (2020).

⁶ Holly Secon and Aylin Woodward, "About 95% of Americans have been ordered to stay at home," *Business Insider*, thebusinessinsider.com (2020).

Currently, 18 states have reported a spike in domestic violence calls resulting from the COVID-19 shelter-in-place mandate.⁷ Houston, Texas Police received 300 more calls in March 2020 than in February.⁸ Charlotte-Mecklenburg Police in North Carolina fielded 517 more domestic violence calls in March 2020 than in March 2019, and San Francisco, California District Attorney Chesa Boudin reported the victim-services division in his office saw a 60% rise in calls seeking domestic violence referrals during the first week of the shelter-in-place order.⁹

This startling increase in domestic violence is not unique to the COVID-19 pandemic. Data shows a spike in domestic violence during the Great Recession of 2007-2009.¹⁰ Needless to say, domestic violence is not exclusive to economic downturns. Every year over ten million Americans experience domestic violence.¹¹ There is, however, a disturbing correlation between violence and level of income; the lower the income, the higher the prevalence of violence.

This paper explores the correlation between poverty and domestic violence and the effect on families when the two intertwine. Part II of this paper details the link between domestic violence and poverty and explains why this area of research needs to be addressed, particularly in a time such as the COVID-19 pandemic. Part III describes the history of domestic violence legislation, and Part IV will examine the judicial system's role, including the criminal courts, family courts, and dependency courts. Finally, appropriate judicial responses will be examined in an effort to advocate for a less punitive and more rehabilitative system that first, recognizes the impact of domestic violence on families in poverty, and second, promotes the state's interest of rehabilitating the offender while simultaneously supporting families that wish to remain intact.

⁷ Tyler Kincaid, "Police see rise in domestic violence calls amid coronavirus lockdown," *NBC News*, nbcnews.com (2020).

⁸ *Ibid.*

⁹ Michael Cabanatuan, "Domestic violence rises in Bay Area during coronavirus shutdown, victim advocates say," *San Francisco Chronicle*, Sfchronicle.com (2020).

¹⁰ Daniel Schneider, "INTIMATE PARTNER VIOLENCE IN THE GREAT RECESSION," web.stanford.edu (n.d.).

¹¹ "National Statistics," *National Coalition Against Domestic Violence*, ncadv.org (2020).

II. THE LINK BETWEEN POVERTY AND DOMESTIC VIOLENCE

Poverty is a form of violence that occurs along economic parallels rather than physical ones.¹² On February 28, 2017, President Donald Trump addressed Congress and declared, “But to break the cycle of poverty, we must also break the cycle of violence.”¹³ There is undoubtedly a link between poverty and violence, but to imply that reducing violence is necessary to reduce poverty is backwards.¹⁴ Violence does not cause poverty. Violence is a symptom of poverty. To say otherwise perpetuates false information which has plagued policy for decades, making it impossible to effect real change. The current administration continues to make mistakes that have been made for years; treating the symptoms, and not the disease.¹⁵

It’s not as simple as poverty breeds violence.¹⁶ To say that poverty causes violence is classism.¹⁷ Many wealthy families experience domestic violence, and many families withstand economic strain without hurting anyone. Families from all socioeconomic statuses experience violence, however, poverty exacerbates the occurrence and severity of violence for those already experiencing it.¹⁸

The COVID-19 shelter-in-place mandate has created a dangerous confluence of factors that can provoke domestic violence: economic stress, prolonged proximity to partners and children all day, and isolation from family and friends.¹⁹ As economic pressures grow, violence in the home grows. To understand how finances and abuse relate to each other requires tracing not a linear narrative, but a downward spiral.²⁰

¹² Nina Verfaillie, “The Connection Between Poverty and Domestic Violence,” *Borgen Magazine*, borgenmagazine.com (2013).

¹³ Kevin Shird, “Violence is a symptom of poverty, not a cause,” *The Hill*, thehill.com (2017).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Verfaillie.

¹⁷ Sandy Doyle, “The Poverty of Domestic Violence,” *In These Times*, inthesetimes.com (2012).

¹⁸ Verfaillie.

¹⁹ Cabanatuan.

²⁰ Doyle.

III. A. Poverty Defined

Poverty is defined as the state of one who lacks a usual or socially acceptable amount of money or material possessions.²¹ Poverty exists when people lack the financial resources to satisfy basic needs such as food, shelter, and medical needs.

B. Domestic Violence Defined

Prior to April 2019, the United States Department of Justice (DOJ) defined domestic violence as:

A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.²²

In April 2019, the DOJ definition was narrowed to include just physical violence.²³ The definition now reads “[D]omestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim”²⁴

C. History of Domestic Violence Legislation

Domestic violence was not considered a crime until 1882.²⁵ Prior to this, domestic violence was considered a “family matter,” an issue the courts did not wish to intervene in.²⁶

²¹ merriam-webster.com (n.d.).

²² Prachi Gupta, “The Trump Administration Has Narrowed Its Definition of Domestic Violence to Just Physical Violence,” *The Slot*, theslot.jezebel.com (2019).

²³ Ibid.

²⁴ “Domestic Violence,” *United States Department of Justice*, justice.gov (2019).

²⁵ D. Kelly Weisberg, *Domestic Violence: Legal and Social Reality, 2nd Edition* (New York: Wolters Kluwer, 2019) 5.

In 1824, in *Bradley v. State*, the Mississippi Supreme Court held that family quarrels were not proper matters for the court and were best dealt with within the walls of the home.²⁷ In the 1880's, however, members of the American Bar Association (ABA) advocated for legislation for the punishment of domestic violence.²⁸ As a result, in 1882 Maryland enacted the first bill making domestic violence a crime.²⁹

Congress enacted the first federal legislation in 1984 called the Family Violence Prevention and Services Act (FVPSA).³⁰ FVPSA provided funding for domestic violence shelters and services for victims of domestic violence. Ten years later, in 1994, Congress enacted the Violence Against Women Act (VAWA). VAWA provided \$120 million to state and local police departments over a three-year period but required states to adopt mandatory arrest policies in cases of domestic violence in order to receive federal funding under the program.³¹ VAWA has been reauthorized in the years 2000, 2005, 2013, and 2019.³²

1. Mandatory Arrest Laws

By the year 2000, 22 states had mandatory arrest laws for cases of misdemeanor domestic violence.³³ Statistics showed mandatory arrest laws were very powerful in reducing the occurrence of domestic violence.³⁴ The statistics failed to take into account, however, that victims in poor communities stopped calling law-enforcement for help shortly after the new law was implemented. Victims became aware that their partner, many times the sole income earner for the family, would be arrested if police were called and economic resources jeopardized.

²⁶ Marlene Rapkin, "The Impact of Domestic Violence on Child Custody Decisions," 19 J. Juv. L. 404, (1998) (urging the adoption of presumption in California). *cyber.harvard.edu*. 1998.

²⁷ Westlaw, *Bradley v. State*, 1 Morr.St.Cas. 20 157, 158 (5th Cir. 1824).

²⁸ Weisberg, 5.

²⁹ *Ibid.*

³⁰ *Ibid.*, 14.

³¹ *Ibid.*

³² "H.R. 1585 – Violence Against Women Reauthorization Act of 2019," *United States Congress*, congress.gov (2019).

³³ Weisberg, 246.

³⁴ James Dyer, "Family Law: Theoretical, Comparative, and Social Science Perspectives," (New York: Aspen 2012) 304.

2. Dual Arrests

With the implementation of mandatory arrest laws came an increase in dual arrests.³⁵

Dual arrests occurred when both parties had injuries but officers were unable to determine which party was the primary aggressor. California's Primary Aggressor Statute, enacted in 1986, put pressure on police officers to arrest the aggressor in a domestic dispute: "Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident." PC §13701(b).³⁶ When an officer could not identify which party was the primary aggressor, both parties were arrested. This left families in poverty facing not only severe financial hardship but families with children now became entangled with the child welfare system. When both parents are arrested child welfare services must step in to address where the child will go.

IV. CHILD WELFARE SERVICES

Twenty-nine states criminalize parents for "failure to protect" children from abuse.³⁷

Under the failure to protect statute, a child may be removed from a parent's custody when the parent is a *victim* of domestic violence. Not a perpetrator, but a *victim*. In 2006 Tondalao Hall was sentenced to 30 years in prison for "failing to protect" her three-month-old daughter after the child's father, Robert Braxton, pled guilty to breaking the child's ribs and femur.³⁸ Braxton was sentenced to two years for the physical abuse he inflicted. No evidence was presented that the mother had ever abused her daughter. There was evidence, however, that the father abused the mother in addition to abusing their daughter, yet the mother was given a prison sentence 15 times greater than the father, the person inflicting the abuse.³⁹

³⁵ Weisberg, 252.

³⁶ "LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE." *California Legislative Information*, leginfo.ca.gov. (n.d.).

³⁷ Alex Campbell, "This Battered Woman Wants to Get Out of Prison." *BuzzFeed News*. buzzfeednews.com (2014).

³⁸ *Ibid.*

³⁹ *Ibid.*

This type of punishment demonstrates a profound misunderstanding of domestic violence. The court wanted to “set an example” for other mothers, yet this type of example prevents other victims from seeking help for fear of being charged with failure to protect themselves. In her article “Poor Parents Are Held To A Different Standard When It Comes To CPS,” Meredith Bland writes, “Poverty, not abuse, is the cause of many child removals.”⁴⁰

The ABA examined the link between poverty and child-neglect and found that “poverty itself is often mistaken for neglect, resulting in increased rates of child maltreatment reports. The inability to feed, clothe, or house a child should not be mistaken for neglect.”⁴¹ The ABA concluded that “addressing the underlying issue of poverty through acknowledgment, increased parent involvement, and increased financial support can help prevent child maltreatment. . . .”⁴²

Child abuse and neglect cost the U.S. economy \$2 trillion dollars per year⁴³ - while domestic violence exceeds \$8.3 billion dollars each year.⁴⁴ The effects of violence and abuse inundate our legal and health systems creating a substantial need for intervention and social services. There are enormous economic *and moral* benefits to preventing violence and abuse.

V. THE JUDICIAL SYSTEM’S ROLE

The consequences of entering the judicial system for a family in poverty can be crippling. Victims and abusers become entangled in a system that further contributes to the epidemic of domestic violence; the loss of a job from being arrested, the loss of financial resources to pay fines and fees, the separation of family members. Each contributor adds additional financial hardship which may provoke further violence. It becomes a vicious cycle for a family in poverty.

⁴⁰ Meredith Bland, “Poor Parents Are Held To A Different Standard When It Comes To CPS,” *Scary Mommy*, scarymommy.com (2017).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Edward Siddons, “Child Abuse costs the US economy \$2 trillion every year,” *Apolitical*, apolitical.com (2018).

⁴⁴ “National Statistics,” *National Coalition Against Domestic Violence*, ncadv.org (2020).

With the influx of domestic violence cases likely to fill courtrooms in the near future due to the Covid-19 shelter-in-place mandate, a structural reassessment is necessary. Courts use mental health professionals as “experts” in cases of domestic violence, yet these experts often have no training in domestic violence.⁴⁵ As a result, courts have developed practices and approaches to domestic violence without knowing what works. Judges, mediators, attorneys and law enforcement officials must receive domestic violence training. Training that specifically teaches how to recognize risk factors for families in poverty. As long as judges, mediators, law enforcement and other professionals within the judicial system continue to make decisions using the present flawed practices without even a basic understanding of domestic violence, the risks to families in poverty remain too great.

A. The Criminal Court

In San Francisco, CA., an arrest for Penal Code 243(d): misdemeanor domestic violence, the bail is \$50,000.⁴⁶ A first-time conviction includes up to one year in jail, 52 weeks of anger management classes and domestic violence counseling.⁴⁷ The court will also impose a protective order protecting the victim. Most families in poverty are simply unable to post the minimum 10% bond (\$5000) needed in order to be released from jail. Without posting bail a defendant remains in custody for a minimum of 24 to 48 hours awaiting arraignment. This timeframe could result in the loss of a job, which often times is the only source of income for the family.

In neighboring State of Nevada, in Washoe County, a first-time domestic violence arrest includes a 12-hour “cooling off” holdover in jail and the offender is released with no bail. If convicted, the maximum sentence is six-months in jail with a maximum fine of \$1000.⁴⁸ The penalties in Nevada are a fraction of the penalties in California for the very same offense.

⁴⁵ Weisberg, 252.

⁴⁶ “Felony-Misdemeanor Bail Schedule.” *Superior Court of California, County of San Francisco*, sfsuperiorcourt.org (2019).

⁴⁷ “California Domestic Violence,” *Law Offices of Robert Tayac*, domesticviolencedefense.com (n.d.).

⁴⁸ “Washoe County Uniform Bail Schedule,” *Washoe Courts*, washoecourts.com (2012).

The approach to domestic violence in Nevada is rehabilitative whereas the approach in California is punitive. For families in poverty, this difference could be the difference between paying rent next month and becoming homeless. California has the highest rate of poverty in the United States.⁴⁹ The criminal justice system may be a major contributor to this. Families in poverty are unable to withstand the loss of needed resources used for bail, mandatory fines, and court ordered batterer intervention programs. The penalties imposed in California have a strong likelihood of placing the offender back in custody for failure to comply with court orders.

B. The Family Court

When an abuser is arrested, a mandatory protection order is often filed by law enforcement or child welfare services.⁵⁰ The most common feature of a protection order is the provision ordering the abuser to have no contact with the victim. Protection orders take away the power to decide from the victim whether to stay in a relationship or leave. A factor often overlooked by family courts is the recognition that victims should have the choice to remain in the relationship while obtaining assistance to end the violence. Victims have many reasons for staying with violent partners; financial dependency, fear of losing custody of children, emotional ties.⁵¹

A victim's feelings often include hope for a future without violence. This hope should not be dismissed as naïve or misguided. Many relationships have succeeded in putting an end to the violence. And with the assistance of the judicial system, many more relationships may be able to put an end to the violence.

C. The Dependency Court

California Welfare & Institutions Code §300(b)(1) provides: a child may become a

⁴⁹ Jon Miltimore, "California Has the Highest Rate of Poverty in America. Why?" *Foundation for Economic Education*, fee.org, (2020).

⁵⁰ "California Domestic Violence," *Law Offices of Robert Tayac*.

⁵¹ Dyer, 305.

dependent of the court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”⁵²

Under federal law, states are required to terminate parental rights when a child has been in foster care for 15 of the last 22 months.⁵³ Many states petition to terminate parental rights after just 12 months.⁵⁴ This short timeframe places difficult hurdles on families in poverty who may not be able to complete the required reunification plan in this timeframe due to a lack of resources to pay for the services or lack of transportation to attend the required services. 71,300 parental rights were terminated in the United States in 2018.⁵⁵

VI. THE ECONOMIC TRAP

Being trapped in poverty or violence often implies being trapped in the other because the two are so synonymous with human suffering.⁵⁶ There are only two ways to end domestic violence in an intimate relationship. One is to limit contact between partners; physical separation of the parties through restraining orders, relocation, temporary shelters. The other is to change a batterer’s behavior; end the violence. Deterrents include: arrest, financial costs, loss of job/housing, custody of children, and rehabilitation including batterer intervention programs. Families in poverty must carefully consider whether these consequences will reduce the violence or increase it.

⁵² Weisberg, 732.

⁵³ David Crary, “Terminating parental rights; State policies vary widely,” *AP News*, apnews.com (2016).

⁵⁴ Lisa Kenn, “Foster Care and Termination of Parental Rights,” *Oregon State Bar*, osbar.org (2019).

⁵⁵ “Number of terminations of parental rights in the United States from the fiscal year of 2008 to 2018,” *Statistica*, statistica.com (2020).

⁵⁶ Verfaillie.

VII. MEASURES TO END DOMESTIC VIOLENCE IN FAMILIES IN POVERTY

Abusive partners must be held accountable for their use of violence. However, criminal punishment and sanctions cannot be the only strategy. This one system cannot be expected to end domestic violence. Although some abusers will only respond to the intervention that arrest, prosecution, and court oversight can provide, others may respond to less intrusive and punitive approaches.⁵⁷

Policies that address prevention are crucial. Preventative measures will save lives. Preventative measures will also save trillions of dollars per year for the U.S. economy. Funding programs that assist in preventing violence before it occurs will yield a tenfold return. Decades old approaches of addressing domestic violence after it has occurred have not worked and must be replaced with policies that prevent people from entering the judicial system in the first place.

Policies To Be Implemented:

- 1) Funding for Stress Reduction/Violence Prevention Services: voluntary in-person and online classes at no cost to families in poverty that teach practical life skills to help participants become more aware of, and more in charge of, violent behaviors.
- 2) Expansion of California's "Sargent Shriver Civil Counsel Act" (Civil Gideon): expansion to all 50 states of Civil Gideon which provides free legal representation to low-income individuals in cases affecting basic human needs.⁵⁸
- 3) Funding for Court Ordered Batterer Intervention Programs: cost-free anger management classes, parenting classes, drug/alcohol classes, and counseling for both batterer and victim for families in poverty.

⁵⁷ "Stress Management and Rehabilitation Training," *Prison S.M.A.R.T.*, prisonsmart.net (n.d.).

⁵⁸ "All About California's Sargent Shriver Civil Counsel Pilot Projects," *National Coalition for a Civil Right to Counsel (NCCRC)*, civilrighttocounsel.org (2019).

4) Policies that Support Victim Decision-Making: 1) not filing charges against an abuser when the victim does not wish to press charges, 2) not requiring mandatory restraining orders separating families.

5) Bail Reform: allow defendants who are the sole income provider for the family to be released from custody to return to work, with zero bail.

San Francisco, California District Attorney Chesa Boudin has implemented this policy. Boudin eliminated cash bail which was discriminatory toward defendants in poverty. Pre-trial release is now based on risk rather than wealth.⁵⁹

VIII.

CONCLUSION

To combat either poverty or domestic violence means acknowledging the relationship between the two. Research shows a direct correlation between economic stress and domestic violence and indicates the relationship is reciprocal in nature. While financial hardship may increase the risk of domestic violence, domestic violence in turn causes financial hardship. To end the cycle of violence for families in poverty, a basic understanding of the effects of poverty on families is necessary. Once the causal relationship between poverty and domestic violence is acknowledged and understood, real change can begin to be effectuated.

⁵⁹ David Greenwald, "Bail Reform Doesn't Mean Automatic Pretrial Release in San Francisco." *The Davis Vanguard*. Davisvanguard.org. (2020).

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<https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/>.

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<https://www.merriam-webster.com>

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